IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.217 OF 2006

Santosh Madhukar Chavan. ..Petitioner.
Vs.
The State of Maharashtra and ors. ..Respondents.

Mr.Shashikant Samant for the Petitioner.
Mr.P.S. Hingorani, APP. for the State.

CORAM : R.S. MOHITE,J.
DATED : 31/1/2006.

P.C.

1. Heard both sides.

2. Rule. By consent, rule made returnable forthwith.

3. This petition impugns an order dated 7.1.2006 passed by the Additional Sessions Judge, Sindhudurg below Exh.131 and 148 in Sessions Case No.3/4/5 of 2005. The crux of the matter is that during the trial certain witnesses who had made certain statements of facts in their police statements were examined. When they entered into the witness box, in their examination in chief they did not depose about the said facts mentioned in the police statements. However, in their cross examination a version which was contrary to what they had stated in police statement relating to those facts was elicited by the defence. On eliciting such a

contradictory version in their substantive evidence, a contradiction with their earlier police statement was sought to be brought on record. This has been disallowed by the trial court on the ground that a statement of fact which find place in the police statement recorded in the course of the investigation cannot be used to contradict the different version which had been elicited during the cross examination of the witness in the court.

4. Section 162 of the Code of Criminal Procedure lays down the rules relating to use of police statements in evidence. In short, the said section provides that when any witness is called by the prosecution in an inquiry or trial and the statement of such witness has been reduced to writing in the police investigation, then any part of the statement, if duly proved, may be used by the accused, and with the permission of the court by the prosecution, to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act, 1872.

5. Section 145 of the Indian Evidence Act lays down the rules relating to cross examination as to previous statements made by a witness in writing. It provides that a witness may be cross examined as to previous statements made by him in writing or reduced into

writing, and relevant to matters in question without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

6. Neither Section 162 nor Section 145 lay down any embargo to the effect that such a contradiction can only be brought on record in the examination in chief. It is well settled that the evidence of a witness consists of examination in chief, his cross examination as well as re-examination if any. In the absence of any embargo, it would be open to the defence to prove a contradiction, if any exists, between the police statement and the evidence which has been brought on record during the cross examination of the witness.

7. The Trial Court in the present case appears to be of the view that the defence cannot be allowed to create a contradiction and then prove the same. There is no question of creation of contradiction. If within the parameters which define the scope of the cross examination, any statement is brought on record by the defence in the cross examination, then said statement is a part of the evidence and if their exists a previous statement of the witness which is contradictory then in

my view, the contradiction can be put to the witness and brought on record. In the circumstances, in my view this is a case where rule will have to be made absolute.

8. It has been observed in the impugned order that certain questions were improperly asked in the sense that they pertained to nature of the contents of the statement made to the police. It is made clear that the reasoning given hereinabove would not permit the defence to ask the witness directly about the contents of the statement said to have been made to the police officer.

9. I am informed that the evidence of some of the witnesses in respect of whose evidence questions were disallowed, has been already completed. I am further informed that this application was moved principally because the defence may face similar difficulty in the recording of evidence yet to come. In view of the closing of the evidence of the said witnesses, it will be open to the defence to apply for recall of those witnessses and if any such application is made, the same may be dispose off on merits. Rule is made absolute accordingly and the the petition is disposed off.

(R. S. MOHITE, J.)